

Circuit Court for Frederick County
Case No. 10-C-16-002359

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1236

September Term, 2017

JACQUELINE VILLAROSE HOPE-
HARNISH

v.

GLEN R. HARNISH

Arthur,
Reed,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: July 24, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. RULE 1-104.

As presented to us, this appeal concerns a discovery dispute in a divorce proceeding. Husband, Glen Harnish (“Harnish”), takes the position that discovery into the value of marital assets is unnecessary as the parties have reached a settlement agreement that divides these assets. Wife, Jacqueline Hope-Harnish (“Hope-Harnish”), by contrast, takes the position that she needs discovery to prove that the settlement agreement should be invalidated. The trial court agreed with Harnish and granted his protective order. We disagree, dissolve the protective order, and remand the case with instructions for further proceedings.

BACKGROUND

After a six-year marriage, the parties separated in early January 2015. Mere days later, Harnish presented Hope-Harnish with a proposed marital settlement agreement drafted unilaterally by Harnish’s lawyer. The settlement agreement purported to give Harnish sole ownership of the house, two rental properties, two cars, two motorcycles, and all retirement accounts. It also required Hope-Harnish to waive any claims for rehabilitative or permanent alimony. In exchange, the settlement agreement provided for a one-time payment to Hope-Harnish of \$7,000. Hope-Harnish, acting without the benefit of counsel, signed the settlement agreement.

Harnish filed a complaint for absolute divorce, and Hope-Harnish filed an answer and a counter-complaint, also seeking absolute divorce. Hope-Harnish also propounded discovery in the form of interrogatories and document requests designed to determine the value of the marital assets. Specifically, the discovery requests sought information concerning: the value of all property in excess of \$1000, regardless of how titled, including

real property, stocks, bonds, bank accounts, cash, automobiles, retirement benefits, and appliances; liabilities to creditors; income related to the real property rentals; Harnish's three highest income years; Harnish's unused annual leave; and all documents used in the preparation of tax returns. Rather than answer, Harnish filed a motion for a protective order pursuant to Maryland Rule 2-403. Harnish argued that the settlement agreement resolved all financial issues between the parties and, as a result, the discovery requests exceeded the proper scope of discovery. In response, Hope-Harnish filed two pleadings, an opposition to Harnish's motion for protective order and a motion to set aside the settlement agreement, both with the same upshot: that the parties' settlement agreement was not valid and should be set aside.

The circuit court granted Harnish's protective order and then denied Hope-Harnish's motion for reconsideration. The parties proceeded to a hearing on Hope-Harnish's motion to set aside the settlement agreement, which the circuit court denied. Months later, the circuit court granted Harnish the divorce. This timely appeal followed.

DISCUSSION

As noted above, this case boils down to whether the trial court erred in precluding Hope-Harnish from obtaining discovery.¹ We hold that the trial court erred and remand the case with instructions for further proceedings.

¹ On appeal, Hope-Harnish also argues that the trial court erred both by shifting the burden of proof to Hope-Harnish in her motion to set aside the settlement agreement and by finding that Hope-Harnish ratified the settlement agreement in her post-execution conduct. We decline to reach either of these issues.

Hope-Harnish moved to set aside the settlement agreement for several reasons, the most notable of which is unconscionability. The trial court was unable to properly complete this task because of the lack of evidence available to it concerning the value of the parties' assets.² It is clear that the information Hope-Harnish sought in discovery would have allowed the court to determine whether the benefit Hope-Harnish received in the settlement agreement was commensurate with what she relinquished or, instead, was unconscionable. *See Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 99-102 (2013) (upholding the validity of a marital settlement agreement only after determining that there was *sufficient evidence in the record* to show that the agreement was not unconscionable). The discovery might also have been relevant to Hope-Harnish's other theories as well.

Whether information is discoverable turns on its relevance. MD. RULE 2-402(a) (“A party may obtain discovery regarding any matter that is not privileged ... *if the matter sought is relevant to the subject matter involved in the action....*”) (Emphasis added). Discovery is meant to prevent parties from proceeding to litigation without the full story, and total denials of discovery are rare. *Dorsey v. Nold*, 362 Md. 241, 252 (2001) (noting that the intent of Maryland Rule 2-402(a) is “to eliminate, as far as possible, a party going to trial in a confused state concerning the facts that gave rise to the litigation”); JOHN A.

² Harnish notes on appeal that when he filed for a protective order, the issue of whether the settlement agreement was unconscionable was not yet before the trial court, as that argument was raised for the first time in Hope-Harnish's motion to set aside the settlement agreement. Harnish argues that as a result, Hope-Harnish is not entitled to discovery to aid in determining unconscionability because she failed to “properly plead” her claim. We do not find this argument convincing, as the motion to set aside the settlement agreement was filed contemporaneously by Hope-Harnish with her response to the motion for a protective order.

LYNCH, JR. & RICHARD W. BOURNE, MODERN MARYLAND CIVIL PROCEDURE § 7.8, 7-131 (2d ed. 2004) (“In light of the generally liberal discovery policy of the Maryland Rules, ... complete denials of discovery should be relatively rare, particularly where the matter sought is *highly* probative with respect to the issues involved in a suit.”) (Emphasis in original). Documents and interrogatories related to the value of property in excess of \$1000 and liabilities to creditors are plainly relevant to determining whether a marital settlement agreement is unconscionable.

We are particularly struck by the trial judge’s comments that the lack of evidence concerning the value of assets prevented the trial court from deciding whether the settlement agreement was unconscionable. Specifically, the trial judge stated that

one thing I often do when I have these kind of cases, when I feel there’s not enough information, I go to the financial statements, and there was none filed by husband, so I couldn’t use the financial statement to try to resolve this, probably just good lawyering. If I were to just look at the gross income of husband compared to the gross income of wife, or what I have to surmise to be the gross income of the wife, it may look unconscionable, but without more specific information, I can’t really come to that conclusion, because I don’t know what the bottom line is.

Thus, Harnish’s refusal to provide discovery responses prevented the trial court from having sufficient information to decide whether the settlement agreement was unconscionable (and may have provided evidence relevant to her other theories as well). This is further evidence that the information Hope-Harnish sought to discover was relevant under Maryland Rule 2-402(a).

We hold, therefore, that the circuit court abused its discretion in denying Hope-Harnish's discovery requests. *See Sibley v. Doe*, 227 Md. App. 645, 658 (2016) (noting that we review denials of discovery for abuses of discretion). We dissolve the protective order and instruct the Circuit Court for Frederick County, after an appropriate time for exchange of discovery material, to hold a new hearing to determine whether the settlement agreement should be set aside.

**JUDGMENT AFFIRMED IN PART AND
VACATED IN PART; PROVISION IN
JUDGMENT GRANTING ABSOLUTE
DIVORCE AFFIRMED; OTHER
PROVISIONS IN THE JUDGMENT
VACATED; CASE REMANDED TO THE
CIRCUIT COURT FOR FREDERICK
COUNTY FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLEE.**